



2026:AHC:204786

Reserved on 24.09.2026
Delivered on 30.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 53967 of 2012

U.P. State Handloom Corporation Ltd.

.....Petitioner(s)

Versus

Dinesh Mishra and another

.....Respondent(s)

Counsel for Petitioner(s) : D.P. Singh, Manohar Prasad Gupta, Shiv
Nath Singh, Vaibhav Tripathi, Vivek Kumar
Birla

Counsel for
Respondent(s) : B.N. Singh, Krishna Nand, Prakash Chandra
Pathak, Rahul Pandey, Rang Nath Pandey,
Sandeep Kumar Shrivastava, Satish Chandra
Dubey, Shailendra Kumar Gupta, Shashi
Kumar Dwivedi

Court No. - 36

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. This is a writ petition of the year 2012 being filed by Petitioner-U.P. State Handloom Corporation Ltd. against an award dated 24.05.2012 passed by Presiding Officer, Labour Court, Kanpur in Adjudication Case No. 103 of 2005, whereby it was held that retrenchment list issued by petitioner Employer was defective and retrenchment of contesting-respondent vide order dated 25.04.2004 was declared completely irregular and illegal and it was directed that

he shall be reinstated with continuity and entire back wages and other benefits. Relevant part of award is reproduced hereinafter:

"मैने पत्रावली का अवलोकन किया एवं पक्षों द्वारा प्रस्तुत तर्कों पर विधिवत विचार किया गया।

पत्रावली के अवलोकन व पक्षों के तर्कों से स्पष्ट है कि वादी श्रमिक की नियुक्ति दि० 12-9-1985 को दैनिक वेतन भोगी टंकक के पद पर की गयी थी और उसी पद पर आदेश दि० 18-3-1987 के द्वारा दि० 1-2-1987 से उसकी सेवायें नियमित करते हुये टंकक का वेतनमान दिया गया था और वादी लगातार छटनी के पूर्व दि० 25-4-2004 तक अबाधित काम करता रहा है। नियुक्ति के संबंध में आदेश दि० 12-9-1985 व 18-3-1987 को दाखिल किया गया है। अब मात्र यह विवादित है कि वादी की छटनी उ०प्र० औद्योगिक विवाद अधिनियम 1947 के प्राविधानों के तहत की गयी है या नहीं। नियमानुसार छटनी करते समय फस्ट कम लास्ट गो का प्राविधान लागू होता है। अब यह देखा जाना है कि क्या उन लोगों को काम पर बनाये रखते हुये वादी की छटनी कर दी गयी है जो उसके बाद में नियोजन में आये हैं। इस संबंध में वादी द्वारा दाखिल प्रदर्श डब्लू-9 जो कार्यालय ज्ञाप दि० 23-7-1998 है तथा जिसके साथ कर्मचारियों की बरिष्ठता सूची / कोटि क्रम भी संलग्न है में वादी का नाम क्रम सं० 4 पर है और उसकी नियुक्ति तिथि 1-2-1987 लिखी गयी है जबकि कार्यालय ज्ञाप के अनुसार "सर्वप्रथम वर्तमान पद पर कार्यभार ग्रहण करने की तिथि के अनुसार" ही नियुक्ति तिथि माने जाने का प्राविधान दिया गया है। इसके अनुसार वादी की नियुक्ति टंकक पद पर दैनिक वेतन पर दि० 12-09-1985 को हुई थी जिसके अनुपालन में वादी द्वारा दि० 17-9-1985 को योगदान आख्या प्रस्तुत की गयी थी उसके पश्चात वादी द्वारा कभी भी योगदान आख्या नहीं प्रस्तुत की गयी है। वादी नियोजन की तिथि से सेवा समाप्ति की तिथि तक टंकक के पद पर ही रहा है और टंकक का ही कार्य करता रहा है, अतः प्रदर्श डब्लू-9 के आधार पर वादी की प्रथम नियुक्ति तिथि 17-9-1985 ही मानी जानी चाहिये। प्रदर्श डब्लू-9 ही प्रदर्श डब्लू-21 है जिसे सेवायोजक साक्ष्य द्वारा स्वीकार करने के बाद प्रदर्शित किया गया है। वादी की सेवायें समाप्त कर पुनः उसे नया नियोजन नहीं प्राप्त कराया गया था बल्कि 18-3-1987 के आदेश से लगभग डेढ़ माह पूर्व से ही दि० 1-2-1987 से नियमित किया गया है, इससे भी स्पष्ट है कि वादी का नियोजन दिनांक 17-9-1985 से आदेश दि० 18-3-1987 तक अबाधित रहा है।

सेवायोजकों का यह तर्क है कि वादी द्वारा कोई कोटि क्रम सूची या छटनी सूची के आधार पर कोई आपत्ति नहीं प्रस्तुत की गयी थी और छटनी को उसके द्वारा स्वीकार करते हुये छटनी की धनराशि प्राप्त कर ली गयी है। इस संबंध में सेवायोजकों द्वारा कोई ऐसा

प्रमाण नहीं प्रस्तुत किया गया कि वादी द्वारा कोटि क्रम सूची व छटनी सूची का कोई विरोध नहीं किया गया जबकि वादी द्वारा कोटि क्रम सूची का विरोध व छटनी सूची का विरोध पत्र तथा छटनी के बाद भी छटनी का विरोध पत्र दिया गया था जो प्रदर्श डब्लू- 14, 15, 16, 17 व. 18 है। अपने कथन के समर्थन में वादी द्वारा सेवायोजको से प्राप्ति रजिस्टर तलब कराये गये थे जिसे उन्होंने रजिस्टर न बनाये जाने के आधार पर प्रस्तुत नहीं किया जबकि उनके गवाह द्वारा यह स्वीकार किया गया है कि एम०डी० कैम्प कार्यालय में डाक प्राप्त करने का रजिस्टर होता था और डाक रजिस्टर पर चढ़कर ही एम०डी० के पास जाती थी। वादी दिनांक 21-4-2004 को व्यक्तिगत रूप से आपत्ति प्राप्त करायी थी और रजिस्टर पर क्रम सं०85 पर उसे प्राप्त किया गया था। सेवायोजकों द्वारा यह भी स्वीकार किया गया है कि वादी का आपत्ति प्रार्थना पत्र शासन से प्राप्त हुआ था जिसका उत्तर शासन को भेज दिया गया था परन्तु उनके द्वारा वादी के विरोध पत्र को दाखिल नहीं किया गया है। उपर्युक्त स्थिति में सेवायोजकों का यह कहना कि वादी द्वारा आपत्ति नहीं की गयी थी असंत्य एव निराधार है। सेवायोजको का यह कथन कि वादी द्वारा छटनी मुआवजा प्राप्त कर लिया गया था इसलिये उसके प्रार्थना पत्र पर विचार किये जाने की आवश्यकता नहीं थी। यह कथन पुष्टि करता है कि वादी द्वारा छटनी का विरोध किया गया था और वादी ने प्रदर्श डब्लू-15,16 द्वारा छटनी का भी विरोध करते हुये भुगतान की धनराशि वापस किये जाने की बात भी कही है।

वादी द्वारा यह तथ्य भी उजागर किया गया है कि एक ही समय में कार्यालय सहायक व सेल्स मैन का वेतनमान नहीं दिया जा सकता है, क्योंकि दोनों अलग-अलग वेतनमान के पद हैं और कोटि क्रम सूची के क्रमांक 42 पर अवनीश चन्द्र श्रीवास्तव को कार्यालय सहायक दर्शाया गया है और नियुक्ति तिथि 1-2-1987 लिखी है। इस सूची के प्रदर्श डब्लू-9 व प्रदर्श डब्लू-21 से स्पष्ट है कि श्री अविनाश चन्द्र श्रीवास्तव की नियुक्ति 1-2-1987 को हुई थी जबकि वादी दिनांक 17-09-1985 से लगातार कार्यरत है, उपर्युक्त विवेचना से पुष्ट होता है। सेवायोजको द्वारा अपने कथन के समर्थन में या सूची की प्रामाणिकता के संबंध में कोई भी अभिलेख या मौखिक साक्ष्य नहीं प्रस्तुत किया गया जबकि वादी द्वारा यह कहा गया है कि अवनीश चन्द्र श्रीवास्तव की छटनी न कर के उन्हें कार्य पर बताये रखा गया है। इस कोटि क्रम सूची को संशोधित करने या पुनः वरिष्ठता सूची न जारी किये जाने की बात सेवायोजक साक्ष्य द्वारा स्वीकार किया गया है जब कि नियमानुसार फाइनल वरिष्ठता सूची विभाग द्वारा तैयार की जानी चाहिये थी। सेवायोजकों द्वारा छटनी की सूची त्रुटिपूर्ण है। छटनी सूची त्रुटिपूर्ण होने की बात इसी न्यायालय द्वारा पूर्व में मेरे पूर्वाधिकारी द्वारा पारित अभिनिर्णय वाद सं०319/2005 व 94/2006 के एवार्ड में भी कही गयी है। वादी श्रमिक मा० उच्च न्यायालय, इलाहाबाद द्वारा दी गयी विधि व्यवस्था जो उ०प्र० औ०वि०अधि०1947 की धारा 6पी का विधिवत् पालन किये बिना की गयी छटनी अवैध

मानी जायेगी के संबंध में है, प्रस्तुत की गयी है जो मा० उच्च न्यायालय, इलाहाबाद की लखनऊ बेंच द्वारा 2009 (121) एफ०एल०आर० पृ०79 चन्द्र पाल सिंह बनाम उ०प्र०राज्य एवं अन्य रिट पिटीशन नं०6484/02 है। इसी प्रकार अपने कथन के समर्थन में मा० बाम्बे उच्च न्यायालय 2007 (114) एफ०एल०आर० पृ०990 बाबू भीकाजी शिन्दे बनाम महाराष्ट्र स्टेट हैन्डलूम कारपोरेशन लि० एवं अन्य रिट पिटीशन सं० 678/1991 व मा० उच्चतम न्यायालय 2009 (120) एफ०एल०आर० पृ०143 कानपुर इलेक्ट्रिक सप्लाय कं०लि० बनाम शमीम मिर्जा सिविल अपील सं०6585/2008 में प्रतिपादित विधि व्यवस्था उद्धृत की है जिससे मैं सहमत हूँ।

उपर्युक्त विवेचना के आधार पर मैं इस निष्कर्ष पर पहुँचता हूँ कि सेवायोजकों द्वारा जारी छटनी सूची त्रुटिपूर्ण है और इस सूची के आधार पर वादी की नियुक्ति तिथि 1-2-1987 मानते हुये की गयी छटनी अवैधानिक है, अतः दिनांक 25-4-2004 से छटनी के रूप में वादी दिनेश कुमार मिश्रा की की गयी सेवा समाप्ति पूर्णतया अनुचित एवं अवैधानिक घोषित की जाती है। सेवायोजक वादी श्रमिक को सेवा की अखण्डता के साथ बेकारी अवधि का सम्पूर्ण वेतन व अन्य हितलाभों सहित कार्य पर बहाल करें। सेवायोजक वादी को भुगतान की गयी छटनी की धनराशि में बेकारी अवधि के वेतन व अन्य हितलाभों को समायोजित करते हुये भुगतान करना सुनिश्चित करें। इसके अतिरिक्त सेवायोजक वादी प्रतिनिधि को ₹01000/- वाद परिव्यय के रूप में पृथक से भुगतान करें।"

2. Sri Vaibhav Tripathi, learned counsel for petitioner and Sri Satish Chandra Dubey, learned counsel for contesting-respondent, have submitted various arguments as well as referred pleadings, however, the Court is of the view that similar nature of awards were challenged before this Court earlier wherein two different types of orders were passed.

3. The first judgment was passed by a Coordinate Bench of this Court in **U.P. State Handloom Corporation Ltd. Kanpur Thru M.D. and another vs. Presiding Officer Labour Court U.P. Lucknow and another, 2023:AHC-LKO:19838** whereby the writ petition filed by petitioner was partly allowed and award challenged therein was modified to the extent that order of setting aside retrenchment was not interfered but a direction of lump sum compensation of Rs. 2 lacs

towards back wages, instead of full back wages, was passed. The relevant part of said judgment is reproduced hereinafter:

“19. This Court on consideration of the award passed by the respondent no.1, finds that it is cryptic in nature. However, on looking to the evidence before the respondent no.1, this Court is of the opinion that the retrenchment order was incorrectly passed without following the principle as given under Section 6(P) of the U.P. Industrial Disputes Act. The State Government had issued an order on 18.03.2004 directing the principle of 6(P) of 'last come and first go' to be strictly followed by the Corporation while preparing the list of employees to be retrenched. It had also been specifically mentioned that the quota of reserved category candidates/ Roster must be maintained and only the juniors employees and unreserved category incumbents may be retrenched. As such, this Court finds that the reasoning as given in the Award dated 27.08.2018 to be unimpeachable.

20. This Court has however also found from a perusal of documents filed before the Tribunal that the respondent no.2 had not stated anywhere that he was not gainfully employed. He had been given retrenchment compensation also for rendering almost thirty years of service. The Corporation was in a pitiable financial condition and therefore had to retrench its employees. At present less than 94 employees are working in the Corporation and it is on the verge of closure. The claim petition was filed in 2010 and has been decided in 2018. Before filing of the claim, the petitioner had filed a complaint before the U.P. State Backward Classes Commission and thereafter filed a Writ Petition and Special Appeal and also Claim petition before the U.P. State Public Services Tribunal. He may have had to do so and this Court cannot take any adverse view only because the respondent no.2 had approached different fora before approaching the Labour Court, but since there was no pleading on record on the basis of which it could be said that the respondent no.2 was entitled to entire back wages on setting aside of the retrenchment order, the direction for setting aside the retrenchment order with consequential benefits reinstatement with full back wages appears to be unreasoned and against the law settled by the Hon'ble Supreme Court. The ordinary principle of grant of retrenchment with full backwages, when termination is found to be illegal is not to be applied mechanically in all cases while what may be the position where services of a regular / permanent workman are terminated illegally and / or malafide and / or by way of victimisation, unfair labour practice etc. However, the Labour Court has wide discretion in granting relief when

setting aside termination. It may look into the surrounding circumstances.

21. The direction issued by the respondent no.1 for reinstatement with back wages could not have been issued as the Corporation was already incurring losses and this fact had come to the notice of the respondent no.1 and the respondent no.1 could have set aside the retrenchment order and structured the relief in such a manner as not to create additional financial burden of reinstatement when the Corporation was on the verge of closure. On facts, lump sum compensation for wrong retrenchment would have been the appropriate relief. (Reference, Hari Nandan Prasad and another vs. Employer FCI - 2014 (7) SCC 190; BSNL vs Bhurumal - 2014 (7) SCC 177; Incharge Office and another vs. Shankar Shetty - 2010 (9) SCC 126)

22. Hence, this writ petition is partly allowed and the Award dated 27.08.2018 is modified to the extent that while the order of setting aside retrenchment is not being interfered with, a lump sum compensation of Rupees Two lakhs may be given to the respondent no.2 by the Corporation instead of back wages and reinstatement.

23. The lump sum compensation shall be given by the petitioner to the respondent no.2 within a period of three months from today. In case of failure to do so, the respondent no.2 shall be entitled to get interest @ 6% per annum with effect from today till the date of actual payment of compensation.”

4. Second judgment was passed by another Coordinate Bench of this Court in **M/D UP State Handloom vs. Smt. Meena Devi, 2024:AHC:6695** whereby impugned award was set aside but instead to grant one time lump sum compensation matter was remanded to Labour Court to decide afresh. It appears that above referred judgment in **U.P. State Handloom Corporation Ltd. Kanpur Thru M.D. (supra)** was not placed before Coordinate Bench, who has decided matter in **Meena Devi (supra)**. Relevant part of judgment in **Meena Devi (supra)** is reproduced hereinafter:

“8. The Court has perused the records.

9. Admittedly, it is not in dispute that respondent-workman was appointed in the petitioner's corporation and the stand of the petitioner is

that the respondent was appointed vide letter dated 30.08.1994 and on perusal of the said letter, it reveals that the appointment was not made in dying in harness basis, but the respondent-employee was appointed as a regular employee. It is also not in dispute between the parties that due to financial crunch as well as withdrawal of the subsidy by the Government on control items, the financial position of Handloom Corporation was gone to the extent that it was not in a position to pay the salary to its employees. It is also not in dispute that the State Government as well as Central Government took a decision to rehabilitate the Handloom Corporation by implementing the 'Deen Dayal Hathkargha Protsahan Yojana' and in pursuance of the said rehabilitation scheme, decision was taken for retrenchment of its employees, including the respondent-employee. A tentative seniority list was prepared and the objection was called, if any, and thereafter, the final seniority list was prepared, which was also published in the daily newspaper. Further, the principle of last come first go' for retrenchment was adopted after following the due process of retrenchment, the respondent-workman was retrenched.

10. The record further reveals that the respondent-workman has accepted their compensation of retrenchment as well as other dues and the same was credited to her bank account without raising any objection, but subsequently, the dispute has been raised taking other ground as well as one of the grounds was that the respondent-workman was appointed in dying in harness and therefore, her services cannot be terminated within ten years of the appointment, hence in view of the said ground, the impugned order was passed. The fact that the appointment letter was issued on 30.04.1994, which has not been considered while passing the award wherein no such condition has been mentioned that the appointment of the respondent-workman has been made in dying in harness and this vital appointment letter has been overlooked by the authorities while passing the impugned award and therefore, the impugned award cannot sustain in the eye of law.

11. In view of the facts as stated above, the impugned award is set aside the matter is remanded to decide afresh within four months after hearing all the stakeholder, without granting any unnecessary adjournment to either of the party. 12. Accordingly, the writ petition is allowed.”

5. In the present case also, contesting-respondent has accepted retrenchment compensation without any protest or objection. An issue, whether said respondent has opposed seniority list was dealt by Labour Court and a finding was returned that objections were filed.

The contesting-respondent was initially appointed as a Daily Wager on 12.09.1985 and regularized vide order dated 18.03.1987 and according to him he has continuously worked thereafter till 25.04.2005 when he was retrenched after accepting retrenchment compensation.

6. The case of respondent-workman was that since objections were made to seniority list and workmen who were junior were not retrenched, therefore, only on ground that he has accepted retrenchment compensation, his retrenchment cannot be justified.

7. Contesting-respondent has declared his age as 52 years when a counter affidavit was filed on his behalf in the month of November, 2012, therefore, presently he has already crossed age of superannuation. As such, the order of reinstatement cannot be implemented and now the only issue is with regard to monetary benefit, if any.

8. In this regard the Court takes note of a judgment passed by this Court in the case of **Uttar Pradesh State Road Transport Corporation vs. Sri Chhotelal and another, 2026:AHC:168675** and relevant part thereof is reproduced hereinafter:

“9. Supreme Court in a recent judgment of Maharashtra State Road Transport Corporation vs. Mahadeo Krishna Naik, 2025 INSC 218 has considered above referred issue wherein after taking note of various earlier judgments on the issue, held as follows :-

“43. We cannot but endorse our wholehearted concurrence with the views expressed in the aforesaid decisions. Taking a cue therefrom, it can safely be concluded that ordering back wages to be paid to a dismissed employee - upon his dismissal being set aside by a court of law - is not an automatic relief; grant of full or partial back wages has to be preceded by a minor fact-finding exercise by the industrial adjudicator/court seized of the proceedings. Such exercise would require the relevant industrial

court or the jurisdictional high court or even this Court to ascertain whether in the interregnum, that is, between the dates of termination and proposed reinstatement, the employee has been gainfully employed. If the employee admits of any gainful employment and gives particulars of the employment together with details of the emoluments received, or, if the employee asserts by pleading that he was not gainfully employed but the employer pleads and proves otherwise to the satisfaction of the court, the quantum of back wages that ought to be awarded on reinstatement is really in the realm of discretion of the court. Such discretion would generally necessitate bearing in mind two circumstances : the first is, the employee, because of the order terminating his service, could not work for a certain period under the employer and secondly, for his bare survival, he might not have had any option but to take up alternative employment. It is discernible from certain precedents, duly noticed in Deepali Gundu Surwase (supra), that the courts are loath to award back wages for the period when no work has been performed by such an employee. Such a view is no doubt debatable, having regard to the ratio decidendi in Hindustan Tin Works (P) Ltd. (supra), Surendra Kumar Verma (supra) and Deepali Gundu Surwase (supra). Though the latter decision was cited before the coordinate bench when it decided Phool Chand (supra), any thoughtful discussion appears to be absent.

44. There is one other aspect that would fall for consideration of the court. In certain decisions, noticed in Deepali Gundu Surwase (supra), it has been opined that whether or not an employee has been gainfully employed is within his special knowledge and having regard to Section 106 of the Evidence Act, 1872, the burden of proof is on him. What is required of an employee in such a case? He has to plead in his statement of claim or any subsequent pleading before the industrial tribunal/labour court that he has not been gainfully employed and that the award of reinstatement may also grant him back wages. If the employee pleads that he was not gainfully employed, he cannot possibly prove such negative fact by adducing positive evidence. In the absence of any contra-material on record, his version has to be accepted. Reference in this connection may be made to Section 17-B of the Industrial Disputes Act, 1947, which confers a right on an employee to seek "full wages last drawn" from the employer while the challenge of the employer to an award directing reinstatement in a higher court remains pending. There

too, what is required is a statement on affidavit regarding non-employment and with such statement on record, the ball is in the court of the employer to satisfy the court why relief under such section ought not to be granted by invoking the proviso to the section. We see no reason why a similar approach may not be adopted. After the employee pleads his non-employment and if the employer asserts that the employee was gainfully employed between the dates of termination and proposed reinstatement, the onus of proof would shift to the employer to prove such assertion having regard to the cardinal principle that 'he who asserts must prove'. Law, though, seems to be well settled that if the employer by reason of its illegal act deprives any of its employees from discharging his work and the termination is ultimately held to be bad in law, such employee has a legitimate and valid claim to be restored with all that he would have received but for being illegally kept away from work. This is based on the principle that although the employee was willing to perform work, it was the employer who did not accept work from him and, therefore, if the employer's action is held to be illegal and bad, such employer cannot escape from suffering the consequences. However, it is elementary but requires to be restated that while grant of full back wages is the normal rule, an exceptional case with sufficient proof has to be set up by the employer to escape the burden of bearing back wages.

45. We hasten to add that the courts may be confronted with cases where grant of lumpsum compensation, instead of reinstatement with back wages, could be the more appropriate remedy. The courts may, in such cases, providing justification for its approach direct such lumpsum compensation to be paid keeping in mind the interest of the employee as well as the employer."

10. In aforesaid circumstances and taking note of above referred position of law and rival submissions, Court finds that an order of granting full backwages since reinstatement was not possible would not be justified considering that respondent-workman has not provided any affidavit or declaration that he was not gainfully employed for period of 30 years when award proceedings remained pending."

9. According to contesting-respondent's case he has worked from 1985 to 2004, i.e., for about 19 years, initially as a Daily Wager and subsequently as a Typist, therefore, also taking note of aforesaid judgments, especially para 20 of judgment in **U.P. State Handloom**

Corporation Ltd. Kanpur Thru M.D. (supra) and the judgment passed by this Court in **Sri Chhotelal (supra)**, the award can be modified by payment of a lump sum compensation instead of reinstatement and full back wages, as already referred reinstatement is not possible now.

10. In aforesaid circumstances, considering the period for which contesting-respondent has worked, time took before Labour Court as well as before this Court, a lump sum compensation of Rs. 3 lacs would be reasonable.

11. In view of above, impugned award dated 24.05.2012 is modified that instead of reinstatement with full back wages, petitioner will pay a lump sum compensation of Rs. 3 lacs to contesting-respondent within a period of four weeks from today.

12. The writ petition is accordingly disposed of.

(SAURABH SHYAM SHAMSHERY, J.)

September 30, 2026
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